

June 1, 1998

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

850 Union Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
Telephone (206) 296-4660
Facsimile (206) 296-1654

REPORT AND DECISION ON APPLICATION FOR PLAT REVISION.

SUBJECT: Department of Development and Environmental Services File No. **L9800074**

ROYAL HILLS

Application for Plat Revision

Location: The receiving site (Royal Hills) is located on the east side of 112th Avenue SE between SE 314th and SE 316th. The sending site is located on the south side of SE Petrovitsky Road, approximately 750 feet west of 134th Avenue SE.

Applicant: Kevin Foley
Baseline Engineering, Inc.
1910 – 64th Avenue West
Tacoma, WA 98466

Receiving Site Geonerco, Inc. (John Merlino)
Owner: 1010 South 336th Street, #305
Federal Way, WA 98003

Sending Site 4A Development (Charles Jackson)
Owner: 144 SW 153rd Street, Suite A
Seattle, WA 98166

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary:	Approve, subject to conditions
Department's Final:	Approve, subject to conditions
Examiner:	Approve, subject to conditions

PRELIMINARY MATTERS:

Application submitted: February 13, 1998

EXAMINER PROCEEDINGS:

Hearing Opened: May 19, 1998

Hearing Closed: May 19, 1998

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES ADDRESSED:

Density transfer

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Applicant:	Kevin Foley Baseline Engineering, Inc. 1910 – 64th Avenue West Tacoma, WA 98466
Receiving Site Owner:	Geonerco, Inc. (John Merlino) 1010 South 336th Street, #305 Federal Way, WA 98003
Sending Site Owner:	4A Development (Charles Jackson) 144 SW 153rd Street, Suite A Seattle, WA 98166
Location:	The receiving site (Royal Hills) is located on the east side of 112th Avenue SE between SE 314th and SE 316th. The sending site is located on the south side of SE Petrovitsky Road, approximately 750 feet west of 134th Avenue SE.
STR:	08-21-05 (Royal Hills) 28-23-04 & 33-23-05 (Sending site)
Zoning:	R4-P-SO (Royal Hills) R6-P-SO & R4-P-SO (Sending site)

2. Except as modified herein, the facts set forth in the King County Land Use Services Division's preliminary report to the King County Hearing Examiner for the May 19, 1998 public hearing are found to be correct and are incorporated herein by reference. The LUSD Staff recommends approval of the application, subject to conditions.

3. On February 13, 1998, an application was submitted to revise Condition No. 3 within the preliminary plat approval for Royal Hills to include a provision which would allow the plat to qualify as a receiving site for the transfer of density credits. The Royal Hills property is zoned R-4, which qualifies it for development with a base density of 44 dwelling units. In September of 1996, under DDES File No. L95P0018 and Ordinance 12434, it was preliminarily approved for development at 49 lots, based on the employment of residential density incentives. The currently-requested revision would simply add to the menu of options available to Royal Hills to achieve its approved maximum development of 49 lots.
4. The property identified as the sending site for the five units of development sought by Royal Hills is a 29.5-acre property consisting of three tax lots located south of Petrovitsky Road near the headwaters for Big Soos Creek. The sending property contains both R-4 and R-6 zoning and carries a total base density for transfer of density credit (TDC) purposes of 121 dwelling units. Because the property is dominated by a large forested Class I wetland which flows into the Big Soos Creek drainage, its owner, 4A Development, is seeking approval for transfer of all 121 base density units, even though no more than five of those units would be usable by the Royal Hills plat. 4A Development has submitted a wetlands study in support of its assertion that its property complies with five of the nine criteria for designation as a sending site: open space, wildlife habitat, woodlands, community separator, and regional trail/natural linkage. 4A Development has offered to convey to King County a conservation easement on the entire site, on the understanding that at a later time it may assign its 116 unused development units to other receiving sites.
5. County Staff has reviewed the sending site application and recommends approval of a 1.35-acre portion as a regional trail/natural linkage yielding five residential density credits to be transferred to the Royal Hills plat. Staff has not reviewed the remainder of the site to evaluate its qualification as a sending property.
6. At the public hearing held on this plat revision application, residents in the Lea Hill area near the Royal Hills property expressed concerns regarding the traffic and drainage impacts of the plat. While the photographs submitted by Paula Thrush clearly depict flooding and erosion occurrences that the County needs to address, these are essentially enforcement and code compliance issues which are unrelated to the revision request currently before us. The Royal Hills preliminary plat application was approved in 1996 for construction of 49 lots, and the current application does not seek to increase this number. Rather, the request is simply to expand the range of regulatory options available to the applicant for achieving the previously-approved 49-lot density. As such, the revision request creates no new off-site impacts, and reopening the plat review process to reconsider issues properly addressed in 1996 is beyond the jurisdiction of this proceeding.

CONCLUSIONS:

1. The essential issue presented for decision by this application is whether density credit from a sending site may be banked for future use. While we agree with the representative of 4A Development that a TDC program has little practical value to the development community without such a banking provision, our reading of KCC Chapter 21A.36 supports the Staff's position that the ordinance as currently written does not provide for the banking of density

credits by sending sites. Reading the ordinance as a whole, it is clear from its overall structure that the legislative intent was to create a precise match between sending and receiving sites. This intent is most clearly manifested in the strategy of tying the County's review process for TDC proposals to the approval of the primary permit for the receiving site. A conclusion that no provision for the banking of density credits on sending sites was intended to be created is implicit in the ordinance's lack of any administrative mechanism for such banking to be accounted and later allocated.

2. The portion of the TDC ordinance which is most applicable to the question of density credit banking is found at KCC 21A.36.050.C and reads as follows:

“Density credits from one sending site may be allocated to more than one receiving site. The credit from each segment shall be allocated to a specified receiving site.”

Within this subsection the TDC ordinance clearly anticipates the situation where the density credits available from a single sending site may exceed the quantity that an available receiving site may accommodate. If banking of excess density credits were contemplated, some appropriate provision therefor surely would have been supplied within this subsection. In reality, however, precisely the opposite occurs. The second sentence of KCC 21A.36.050.C requires the excess density credits to be allocated to additional specific receiving sites. Within the context of this provision and the structure of the ordinance as a whole, the unavoidable implication is that these additional receiving sites need to be specified at the time of primary proposal review. Accordingly, while we agree that the interpretation offered by 4A Development makes good sense from a utilitarian standpoint, it is clear that the banking outcome proposed is beyond the authority of the ordinance as currently written.

3. The receiving and sending sites identified within this application meet the requirements of KCC 21A.36 for the transfer of five (5) residential density credits.
4. If approved subject to the conditions recommended below, the proposed plat revision makes appropriate provision for the public health, safety and welfare; serves the public use and interest; and meets the requirements of RCW 58.17.110.

DECISION:

The revised subdivision application submitted on February 13, 1998 is APPROVED, subject to the conditions of preliminary approval imposed under Ordinance 12434, except that Condition No. 3 thereof is revised to read as follows:

3. The plat shall comply with the base density and minimum density provisions of the R-4 zone classification. A maximum of forty-nine lots shall be permitted, based upon qualification for not fewer than five additional units through residential density incentives (RDI) or the transfer of density credits (TDC), or combination of RDI and TDC, subject to the following:
 - a. Application of the energy conservation residential density incentive allowing a 10% increase above the base density of the zone shall be determined by DDES, based upon updated information from the King County Department of Transportation at the time of final plat recording.

- b. To qualify for the affordable housing residential incentive, the subdivision shall comply with the requirements of KCC 21A.34.040.F.1.d. In this regard, those lots for which a density incentive credit is claimed shall be specified on the final plat as limited to a residence for a moderate income home buyer. Any reporting requirements established by the King County Housing and Community Development Program (KCHCDP) concerning buyer eligibility and housing price shall be met. These requirements shall apply only to the first buyer of the residence on each specified lot, and do not apply to subsequent buyers. The Applicant shall also enter into any necessary agreements with King County to implement KCC 21A.34.040.F.1.d, as determined by KCHCDP.
- c. To qualify for the transfer of density credits (TDC), the proposal shall comply with the rules therefor stated at KCC 21A.36.050. The approved sending site shall have a completed and recorded land dedication or conservation easement established prior to final plat approval of Royal Hills. Such land dedication and conservation easement shall be reviewed and approved by King County Department of Natural Resources and the Department of Development and Environmental Services prior to its recording.

ORDERED this 1st day of June, 1998.

Stafford L. Smith, Deputy
King County Hearing Examiner

TRANSMITTED this 1st day of June, 1998, to the parties and interested persons shown on the attached list.

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) on or before June 15, 1998. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council on or before June 22, 1998. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE MAY 19, 1998 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT
AND ENVIRONMENTAL SERVICES FILE NO. L9800074 – ROYAL HILLS:

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Greg Borba, Connie Blumen, Alison Moss, Kevin Foley, Charles Johnson, John Merlino, Paula Thrush, and Dennis Sheehan.

The following exhibits were offered and entered into the hearing record:

- Exhibit No. 1 DDES preliminary report to the Hearing Examiner
- Exhibit No. 2 Hearing Examiner Report and Recommendation on L95P0018, dated August 6, 1996
- Exhibit No. 3 Letter from Kevin Foley requesting plat revision, received February 13, 1998
- Exhibit No. 4 Royal Hills plat map, received February 13, 1998
- Exhibit No. 5 Density Credit Transfer Agreement between sender and receiver, dated February 7, 1998
- Exhibit No. 6 Wetland Report (sending site) by the Coot Company, dated September 1996
- Exhibit No. 7 Letter from the Coot Company, dated January 15, 1998
- Exhibit No. 8 Letter from the Coot Company, dated February 3, 1998
- Exhibit No. 9 Aerial photo of sending site
- Exhibit No. 10 Memorandum from Jon Hansen, dated March 27, 1998
- Exhibit No. 11 Memorandum from Connie Blumen (KCDNR), dated April 23, 1998
- Exhibit No. 12 Trail map and proposed trail easement on sending site
- Exhibit No. 13 Affidavit of Publication in Seattle Times, published March 27, 1998
- Exhibit No. 14 DDES File L9800074
- Exhibit No. 15 Notebook submitted by Applicant in support of plat revision
- Exhibit No. 16 Photographs (11) submitted by Paula Thrush

SLS:gb

Attachment

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